

prime contractor will receive the award by “fixing the Intelsat space segment prices being offered to the three prime contract bidders.”¹³⁸

In addition, CapRock alleges that Intelsat has retaliated against it for raising these competitive concerns by refusing to quote prices for satellite capacity to CapRock in two instances. Instead, CapRock was required to get quotes from IGEN, with prices that CapRock describes as being far above market rates.¹³⁹ ARTEL alleges that IGEN has retaliated against and intimidated those distributors that compete against it directly.¹⁴⁰

Intelsat views these allegations as efforts to “inappropriately ... use the instant proceeding as a forum to hobble Intelsat as a privatized competitor and to restore the regulation in U.S. markets to which” Intelsat was previously subject.¹⁴¹ Intelsat states that the “limited purpose” of the ORBIT Act Report is to “provide a report to Congress to confirm that Intelsat now operates in the satellite marketplace as a fully privatized company.”¹⁴² Intelsat contends that because the allegations are not based on Intelsat’s former status as an IGO and because these comments are an “inappropriate attempt to inject the FCC into ongoing commercial disputes,” the comments should be dismissed.¹⁴³

iv. Scope of the Report and Legacy Issues

Intelsat states that the purpose of the ORBIT Act “is to promote a fully competitive global market for satellite communications services ... by fully privatizing ... Intelsat and Inmarsat.”¹⁴⁴ According to Intelsat, this means that the “sole criteria” for determining whether the Orbit Act’s purpose has been met is whether Intelsat “operate[s] as an independent commercial entity and [has] a pro-competitive ownership structure,” both of which Intelsat contends have been clearly achieved.¹⁴⁵ Similarly, the “limited purpose” of the ORBIT Act Report, according to Intelsat, is to inform Congress whether Intelsat and Inmarsat “have been

¹³⁸ *Id.*

¹³⁹ *Id.* at 11. Globecomm and ARTEL also state that Intelsat has retaliated against competitors that have complained about such practices, but neither offers specifics regarding the alleged retaliation. Globecomm Comments at 4; ARTEL Comments at 6.

¹⁴⁰ *Id.* at 5-6.

¹⁴¹ Intelsat at 2.

¹⁴² *Id.* at 1.

¹⁴³ *Id.* at 3, 9. In its surreply, ARTEL notes that Intelsat does not deny ARTEL’s allegation that IGEN engaged in “several anticompetitive and discriminatory actions,” including denying access to the Intelsat fleet to those that have competed against IGEN; retaliating against competitors by refusing to provide pricing and terms for “ongoing, established space segment leases”; asking that competitors not bid on projects of interest to IGEN and denying pricing for those competitors that do not comply; and entering into exclusive relationships that prevent or discourage those operators from working with IGEN’s competitors. ARTEL Surreply at 2-3.

¹⁴⁴ Intelsat at 2-3.

¹⁴⁵ *Id.* at 3.

fully privatized and now compete on a level playing field.” Intelsat concludes that any recommendations made by the commenters that Intelsat be required to implement pre-privatization business practices (e.g., file tariffs or not have direct access to customers) exceed the scope of the ORBIT Act.

Intelsat argues that privatization was “intended to end the separation of Intelsat from end-users and permit Intelsat to compete in the same manner as all other satellite providers” by making “pricing proposals responsive to private and government user needs based on Intelsat’s own business judgment.”¹⁴⁶ Intelsat sees no need for it to be regulated as a “public utility” because the FCC already regulates Intelsat’s service on “thin routes.”¹⁴⁷ Intelsat is subject to FCC regulation, and on those routes, Intelsat still offers switched-voice, private line and occasional-use video services pursuant to tariff.¹⁴⁸ Intelsat maintains that to force it to operate as a common carrier or to provide “uniform prices on all routes” would significantly reduce its ability to compete against other providers.

ARTEL states that the ORBIT Act “directs the Commission to ‘condition or deny’ authority sought by [Intelsat] ... to the extent necessary to protect competition in the commercial satellite market.”¹⁴⁹ Further, ARTEL contends that the Commission must, as the notifying administration, ensure that Intelsat, pursuant to the ITSO Treaty, provide “non-discriminatory access to legacy fleet assets.”¹⁵⁰ ARTEL and Globecom further note that Intelsat no longer publishes tariffs for every space segment, provides transponder guides and contour maps, or sells capacity on a bit rate basis. ARTEL and Globecom views these failures as anticompetitive.

Intelsat, however, also disagrees with the commenters’ conclusion that the Public Services Agreement (PSA) between ITSO and Intelsat requires the Commission to regulate Intelsat pricing. Intelsat also disagrees that the “core principle” of non-discriminatory access in the PSA provides any “basis for additional Commission regulation.”¹⁵¹ With regard to the PSA and pricing, Intelsat contends that “the PSA is a private contract, uniquely enforceable by ITSO under arbitration procedures.”¹⁵² With regard to ITSO and non-discriminatory access, Intelsat contends that non-discriminatory access is a “safeguard against governments foreclosing Intelsat from serving certain national markets and thus impairing global connectivity and coverage,” and

¹⁴⁶ *Id.* at 4.

¹⁴⁷ Thin routes are those not yet shown to have competitive alternatives.

¹⁴⁸ *Id.* at 4-5.

¹⁴⁹ ARTEL Comments at 2. Globecom agrees that Intelsat’s behavior is in violation of its obligation under the ITSO Agreement that requires Intelsat to provide non-discriminatory access Intelsat’s system. Globecom Comments at 5.

¹⁵⁰ ARTEL at Comments 2. ARTEL states that Intelsat licenses were modified by the Commission to require that “Intelsat remain a party to an agreement between Intelsat and ITSO that governed Intelsat’s conduct and ensured that it follow the ‘core principles’ of global connectivity ... and non-discriminatory access.”

¹⁵¹ *Intelsat* at 6.

¹⁵² *Id.* at 5.

is therefore unrelated to Intelsat pricing or commercial relationships with customers such as ARTEL.¹⁵³

v. Commenters' Proposals

ARTEL and CapRock both urge the Commission to initiate a review of the structure of the FSS industry, specifically addressing their concerns about Intelsat's market power, and consider adopting new policies to address their competitive concerns.¹⁵⁴ Globecomm requests that the Commission take action to ensure "non-discriminatory access to Intelsat's system."¹⁵⁵ Spacenet suggests that the Commission consider rule changes to promote competition in domestic transponder capacity.¹⁵⁶

As part of its examining the FSS market, ARTEL suggests that there is a need for greater transparency regarding the terms under which U.S. providers gain access to satellite capacity; a review of Intelsat's obligation to provide transparent and non-discriminatory access; and the consideration of appropriate enforcement and regulatory mechanisms to deal with collusion, intimidation, price fixing, and other deleterious behavior.¹⁵⁷ ARTEL suggests that, as part of this inquiry, the Commission consider the creation of a separate wholesale channel, additional license conditions, and divestiture of vertically integrated assets such as IGEN.¹⁵⁸

CapRock asks that the Commission initiate comprehensive reform of its policies governing the assignment of rights of use of orbital locations, with the goal of enabling innovation in international satellite communications and encouraging the deployment of newer, more efficient space stations. CapRock asks that the Commission review its policies for assigning orbital locations and that authorization to operate space stations at orbital locations be periodically reviewed. CapRock also suggests that such review provide for the orbital locations being made available to other operators in the event that it is not being utilized in an efficient manner.¹⁵⁹ In addition, CapRock also requests that, in the ORBIT Act Report, the Commission recommend a review of Intelsat/IGEN's role in the provision of satellite services.¹⁶⁰

¹⁵³ *Id.* at 6.

¹⁵⁴ ARTEL also states that it is not requesting that the Commission take action on these recommendations in the proceeding, but requests that its proposed remedies be included in this Report. ARTEL Surreply at 10.

¹⁵⁵ Globecomm Comments at 6.

¹⁵⁶ Spacenet at 7-8.

¹⁵⁷ ARTEL Comments at. i-ii, 14-17.

¹⁵⁸ *Id.* at 16-17.

¹⁵⁹ CapRock suggests that the incumbent be required to demonstrate that replacement satellites add meaningful incremental bandwidth capacity to maintain their orbital slots. CapRock at 15.

¹⁶⁰ CapRock at 17. Outside the scope of the ORBIT Act Report, CapRock requested that the Commission initiate an enforcement action against Intelsat and IGEN relating to the imposition of a "forced bundle" and implementation of their "incumbency pricing policy," and initiate a proceeding to establish safeguards and procedures to isolate IGEN from inquiries and transactions relating to Intelsat space segment supply.

Globecomm suggests that the Commission take active steps to clarify Intelsat obligations as a signatory to the PSA between Intelsat and ITSO and to ensure that Intelsat satisfies such obligations and establish procedures for addressing noncompliant behavior.¹⁶¹ Globecomm also recommends that Intelsat only be able to enter the market for competitive facilities through a fully separate subsidiary, and that any Intelsat subsidiary only be able to acquire transponder capacity from Intelsat on a tariffed basis.¹⁶²

Spacenet requests that the Commission reassess its rules and policies with respect to orbital assignments, to promote competition in the market for domestic transponder capacity and to assure continuity of service for data network operators and their customers.¹⁶³

Intelsat rejects the commenters' proposals as not suitable for a fully privatized entity. In particular, Intelsat states that some of the proposals suggested by the commenters would preclude Intelsat from competing for end-user business and hamper its ability to adjust pricing to be responsive to user needs.¹⁶⁴

IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

A. Inmarsat

Inmarsat's privatization appears to have had a positive impact on the domestic market.¹⁶⁵ In its comments, Inmarsat states that it has continued to invest in new technologies for mobile satellite service customers.¹⁶⁶ As an example of this investment, Inmarsat points to its \$1.5 billion investment in its fourth-generation (I-4) satellite network, which is designed to support mobile broadband services, including its BGAN service.¹⁶⁷ Inmarsat launched the third satellite in the I-4 network in 2008 completing fourth-generation worldwide coverage. Inmarsat states that its BGAN service is being utilized in innovative ways by its customers, including in response

¹⁶¹ Globecomm Comments at 6. Globecomm suggests that complaint procedures similar to those in 47 U.S.C. § 208 be established, and that the Commission require transparency with regard to rates, terms, and conditions of service provided by Intelsat to its affiliates.

¹⁶² *Id.* at 7.

¹⁶³ Spacenet at 7-8.

¹⁶⁴ Intelsat at 4.

¹⁶⁵ Inmarsat is the only commenter that discussed the impact of Inmarsat's privatization.

¹⁶⁶ Inmarsat at 2.

¹⁶⁷ See fn. 48, *supra*. BGAN provides voice and broadband service with speeds of almost half a megabit per second using "notebook sized" antennas that are one-third the size, weight and price of traditional Inmarsat antennas. See Inmarsat at 2. Inmarsat has also offered similar services to its aeronautical and maritime customers under the names SwiftBroadband and FleetBroadband. *Id.* at 3-4. Other new services are described in Inmarsat's Comments. *Id.* at 4-5.

to recent natural disasters.¹⁶⁸ As another example of its innovative technologies, Inmarsat plans to introduce a worldwide Global Satellite Phone Service ("GSPS") over its I-4 satellite network. GSPS will support telephony, short message service, fax, data, voicemail, text, email, and location data. Additionally, Inmarsat remains committed to its support of global maritime distress and safety services ("GMDSS").¹⁶⁹

B. Intelsat

INTELSAT's privatization from an intergovernmental organization to a fully commercial operation has enabled it to more effectively compete to provide services to U.S. commercial and governmental customers. The privatization of INTELSAT, in 2001, enabled it to compete freely for U.S. satellite business opportunities, led to more competitive choices in the U.S. market than existed before privatization, and continues to encourage the development of service offerings to U.S. customers. As noted above, however, firms that are both competitors and customers of Intelsat have submitted comments in the record of this report that question whether certain practices of Intelsat post-privatization are anti-competitive.

Comments received for the 2010 ORBIT Act Report express contrasting views on the impact of the privatization of Intelsat.¹⁷⁰ Intelsat concludes that the privatization goals of the ORBIT Act have been fulfilled because Intelsat no longer claims the privileges and immunities of an intergovernmental organization, is neither owned nor controlled (directly or indirectly) by any government or former signatory, and is regulated by the Commission on the same basis as other providers of satellite services.¹⁷¹ Intelsat states privatization continues to have a positive impact on the global marketplace for communications services.¹⁷² Intelsat further states that it remains committed to ensuring continued global connectivity and service to countries dependent on Intelsat's satellite services. The other commenters disagree with Intelsat's conclusion that privatization has resulted in a competitive FSS marketplace. These commenters do not agree that the goals of the ORBIT Act have been achieved solely because Intelsat is no longer an IGO.

In 2008, the Commission took action to ensure that Intelsat remains committed to ensuring continued global connectivity and service to countries dependent on Intelsat's satellite services. The Commission conditioned Intelsat's licenses to require that Intelsat remain a signatory to the Public Services Agreement between Intelsat and ITSO that was approved by the ITSO Twenty-

¹⁶⁸ For example, Inmarsat states that it and its distribution partner, Vizada, donated 70 BGAN terminals to the International Telecommunication Union to help countries prepare for and respond during disasters, and the BGAN technology was used by a number of agencies in response to the earthquake in Haiti. *Id.* at 3.

¹⁶⁹ See *Inmarsat PLC Annual Report and Accounts 2009* at 12, available online at http://www.inmarsat.com/Downloads/English/Investors/Inmarsat_Annual_Report_2009.pdf?language=EN&textonly=False.

¹⁷⁰ For a more complete discussion of the comments received in this proceeding, see Section III, *supra*.

¹⁷¹ Intelsat Reply at 1-2.

¹⁷² *Id.* at 6-8, citing SES, Telesat, Eutelsat and Intelsat as competing with integrated systems of multiple satellites, as well as several current regional service providers, including Hispasat (Brazil), Ciel (Canada) and Quetzsat (Mexico) and several planned or newly launched systems (Colombia, Venezuela and Bolivia).

fifth Assembly of Parties.¹⁷³ The Commission also conditioned Intelsat's licenses to provide that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.

V. Summary

As discussed above, many far-reaching complaints and recommendations have been presented for consideration here since the Public Notice comment period closed at the end of April 2010.¹⁷⁴ Going forward, the Commission will consider the appropriate options for addressing those issues raised by the commenting parties and Intelsat that are within our jurisdiction under the ORBIT Act and other laws. In the interim, the Commission will continue to implement and enforce the requirements of the ORBIT Act. The Commission will also continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

¹⁷³ Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, *Order of Modification*, 23 FCC Rcd 2764, 2770 (Int'l Bur., 2008).

¹⁷⁴ See fn. 103, above.

APPENDIX

Index of Filings:

Comments, filed April 7, 2010

- Comments of Inmarsat PLC, available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020406671>
- Comments of Spacenet Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408222>
- Comments of CapRock Communications, Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408252>
- Comments of ARTEL, Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408259>
- Comments of Globecom Systems Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408174>

Reply Comments, filed April 21, 2010

- Reply Comments of Intelsat LLC, available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020409961>

Surreplies, filed April 28, 2010

- Surreply of Globecom Systems, Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020442163>
- Surreply of ARTEL, Inc., available at
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020442284>